

14 SEP 1948

Mr. F. Eberstadt
Chairman, Committee on National
Security Organization
Commission on Organization of
Executive Branch of Government
1626 K Street, N. W.
Washington 25, D. C.

My dear Mr. Eberstadt:

On Friday, there was raised the question of security of information relating to the national defense and the laws, enacted or proposed, to protect this security. In accordance with your request, the following reflects our views on this problem.

The comments below are addressed primarily to a proposed amendment to the Espionage Act and acts relating to the national security, which is now in the Bureau of the Budget but has not yet been submitted to the Congress. This proposed legislation is not sponsored by CIA nor, indeed, were we consulted in the drafting of it. Consequently, our views as set forth here are made freely from our point of view alone and do not constitute an official concurrence or objection to the proposed bill.

I might point out here that my views on the problem of security are inevitably influenced to some extent by the fact that, as Director of Central Intelligence, I am held responsible for protecting intelligence sources and methods from unauthorized disclosure (section 102(c) of the National Security Act of 1947). I am deeply conscious of the heavy responsibility so placed upon me and realize that I need all the assistance the law can give to carry it out successfully. I am also aware, however, that important as security may be in the national interest, it is second to the basic rights of free speech and civil liberty. It is necessary, therefore, to search for a balance between the two which will be adequate to serve the interests of national security without infringing unduly on the essential liberties.

The first section of the proposed bill apparently is an attempt to tighten up sections 1 and 4 of the existing Espionage Act (50 U.S.C. 31, 34). The present section 1(d) makes punishable the transmission or attempt to transmit to a person not entitled to receive it of any book, instrument, appliance, or note relating to the national defense. The proposed draft adds to those physical items "information" relating to the national defense. Apparently, it was felt that under the old law a person might have a book or appliance, but if he merely passed on information, without a physical transfer, to an unauthorized person, he could not be prosecuted under this section. I feel that this is a desirable change in the law which does not broaden its scope but merely closes a technical loophole relating to the same offense that is now on the statute books. Also desirable, I believe, is the proposed change to section 1, making punishable failure to report discovery that a document or information relating to the national defense has been lost, stolen, or abstracted. The proposed amendments to section 4 of the Espionage Act and the provisions concerning limitations of time are not important enough to warrant full discussion and are not, so far as we are concerned, controversial. It is, however, apparent from the history of prosecutions under the Espionage Acts that the stumbling block most commonly found in the requirement that the Government show intent, or reason to believe, on the part of the accused, and these elements are not easily susceptible of proof. At present, the Supreme Court appears to feel that without those elements of proof the statutes might be unconstitutional. It is possible, however, that wording could be found which would be more practical for prosecution purposes and yet would not violate constitutional principles.

Section 4 of the proposed bill adds a new category to those persons required to register as agents of a foreign power which would add the following clause to the provisions establishing the present categories:

"(5) any person who has knowledge of or has received instruction in the espionage, counter-espionage, or sabotage service or tactics of a government of a foreign country or a foreign political party;"

This would, under a literal interpretation, force all those with counterintelligence experience during the war or otherwise, and many of those in other intelligence fields, to register as agents of foreign powers. We do not feel it is advisable to enforce the registration of American citizens as such agents under threat of fine or imprisonment merely because they have specialized knowledge or experience. As

this proposed provision looks to the strengthening of internal security measures, it is not properly a field for comment by this Agency, which by law is prevented from exercising any internal security functions. But as this provision could be construed to require the registration of many CIA employees, past and present, I feel that we would be bound to raise objection to its passage.

Section 5 of the proposed bill would authorize an exception to section 606 of the Communications Act, which prohibits the unauthorized release or use of information carried by wireless, telegraph, or telephone. As drafted, this proposed exception is designed to support the exercise of police powers in the interest of internal security. In view of the statutory limitations on CIA, it would not be appropriate for me to comment on this aspect of the bill, particularly, as it would appear to contain controversial aspects on which considerable debate can be expected. The authority here sought, however, infringes on a field in which CIA has a strong and proper interest. The details of this field are of such a confidential nature that I feel they should not be considered here but should be discussed orally in the strictest confidence.

Paragraphs 6 and 7 of the proposed bill do not affect CIA in any way and are, therefore, not commented on. I should, however, like to close with a few generalities. I could propose legislation which would be effective in maintaining security but which would also be repugnant to our system of government as in effect creating a police state and control of the press. I could on the other hand propose legislation similar to the British Official Secrets Acts which are somewhat more detailed than our Espionage Acts but also recognize the need for protecting civil liberties and freedom of speech. Even though considered stricter than our laws, I have been informed that the Official Secrets Acts are, like our own, ineffective in many cases where security is breached by unauthorized newspaper stories, articles, or speeches. The British are faced with the same problem as we and after many years of experience have ended up in a position somewhat similar to the one in which we now find ourselves. I feel, therefore, that unsatisfactory as our laws are from a strict security viewpoint, they must be accepted with the minor revisions referred to above and the situation faced accordingly. This means constant effort to forestall breaches of security

by careful choice of personnel and strict enforcement of effective security measures within the agencies and, in the event of breach, prompt and firm action against the responsible persons in so far as applicable laws will admit.

Sincerely yours,

Signed & Sent thru ER

R. H. HILLIENHUTTER
DIRECTOR OF CENTRAL INTELLIGENCE

Encl - copy of ref. bill (Bus. Budget)

cc: Director ✓ w/o encl.
Return to L.R. Houston

Central Records

LRH:mbt

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